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**Hitting the Right Note:
Understanding Legal
Requirements for Remote
Workers Living in Other States**

Presented by: Allen L. Hutson and Evan Way



Allen L. Hutson and Evan Way




- Litigators in the firm's Oklahoma City office
- Labor & Employment Practice Group
- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Allen L. Hutson, Evan Way, or another licensed attorney.




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Remote Work aka "Working From Anywhere"

- 58% of American workers having the opportunity to work from home at least one day a week
- 35% of American workers having the option to work from home 5 days a week
- 87% want to take advantage of work flexibility options
- This applies across all industries, demographics, occupations, and geographies
- ***2022 McKinsey survey



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Remote Work is (Probably) Here to Stay

- 40% of American workers say they'd quit if forced to return to the office full time
- Workers want to work from home an average of 2.5 days a week
- 34% of women wanted 5 days a week
- 26% of men wanted 5 days a week



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Tax Issues With Remote Workers

- State corporate or other business activity taxes can apply, if even a single employee is working in a state
- In effect, if an employer did not previously have a recognized office in a state, but one employee starts working from there, this can trigger entirely new registration requirements and tax liabilities
- It may be necessary to register with the secretary of state and relevant tax authorities, provide a registered agent address, and pay corporate and business activity taxes, sales taxes and employment taxes, including employee withholding
- There are often state and local licenses and business permits as well

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No Easy Button—Detailed Analysis Required

- Each state has its own tax scheme
 - Convenience of the Employer rule may apply
 - Temporary Presence Test
 - When a worker becomes a “resident” isn't always clear-cut



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Guidance from the Oklahoma Tax Commission

I'm writing to inquire about sources of income taxable to a nonresident of Oklahoma. I am an employee at the [REDACTED] but have been working remotely for [REDACTED] since 2010. After moving from Oklahoma in August 2010, I have filed taxes as a nonresident of Oklahoma and continue to withhold state income taxes. In preparation for our 2017 return, I began to wonder what my status is as a remote employee working out of state (and also filing state income taxes in my current state of residence). As a remote employee, my work is not performed in Oklahoma. Will you please advise me and/or help me understand if I should continue withholding state income tax for the state of Oklahoma?

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Guidance from the Oklahoma Tax Commission

You requested an opinion as to whether your wages are subject to Oklahoma withholding tax. As a nonresident whose salaries, wages and commissions are for work performed outside of Oklahoma, and who derives no income from sources within the state of Oklahoma, it is the opinion of the Tax Policy Division that your employer is not required to deduct and withhold Oklahoma withholding tax from your wages.

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Staying Compliant with Employment Laws

- Generally, employees working remotely are subject to the laws where the employee is physically present—immediately
 - Wage & Hour
 - Leave Requirements
 - Employee Disclosures
 - Tax Treatment of Employee Benefits
 - Garnishment Restrictions
 - Background Screening
 - Employee Privacy

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Unemployment Insurance

- Guidance from U.S. DOL—Localization of Work
- “The objective of ‘localization of work’ provisions in state unemployment insurance laws is to cover under one state law all of the service performed by an individual for one employer, wherever it is performed.”
- Hierarchy to determine where unemployment is paid:
 - Services are localized within a state, or services performed outside the state are incidental, temporary or transitory.
 - If service is not localized in one state:
 - base of operations; or
 - the place from which services are directed or controlled; or
 - the individual's residence state

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Unemployment Insurance Hypos

- Service performed entirely in one state:
 - *A salesman employed by a New York corporation, who lives in Indiana and performs all of his work in Illinois, is covered by the Illinois law because all of his work is performed in Illinois, even though the corporation for which he works is located in New York and he lives in Indiana.*

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Unemployment Insurance Hypos

- Service performed both in a state and outside that state:
 - *A resident of New York was hired as a technical specialist for a financial information provider. All services were performed in New York for two years, after which the employee moved to Florida because her husband had changed jobs. Since the employer had invested time and money in training this individual, it agreed to allow her to telecommute from Florida. After the relocation took place, all of her assignments and work products were communicated via the Internet. Since this employee is now performing all duties in Florida, even though the employer is located in New York, her services are localized in Florida and subject to Florida law. Therefore, all wages from the date she began telecommuting from Florida, are reportable to Florida.*

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Workers' Compensation

- Employers must generally cover employees based on where the employee physically works
 - Can usually be covered through a policy addendum
- Continue to use standard policies to document injury
 - Written statement
 - Photos of the injury
- Determining if the injury was in the course of employment
 - Can be tricky with remote workers
 - Consider requiring a separate, dedicated work area and break/mealtimes



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What Employers Should Know

- Employers are responsible for knowing where their employees are working
 - Have a policy in place
- Employers are responsible for knowing and complying with relevant laws
 - Seek guidance from local professionals
- Employers could face substantial liability for noncompliance
 - Not knowing where an employee resides could lead to labor complaints and tax issues




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Best Practices

- Establish a remote-work policy
- Establish a procedure to update where an employee is working
- Consider using IT solutions to monitor where an employee works
- Seek guidance from local counsel
- Be flexible and revisit policies annually



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 **Contact**
Allen L. Hutson
405.234.3206
allen.hutson@crowedunlevy.com
crowedunlevy.com

Contact
Evan Way
405.239.6636
evan.way@crowedunlevy.com
crowedunlevy.com

Oklahoma City
Braniff Building
324 North Robinson Ave.
405.235.7700

Tulsa
222 N. Detroit Ave.
Suite 600
918.592.9800

Dallas
2525 McKinnon Street
Suite 425
214.420.2163

Houston
3663 N. Sam Houston
Parkway East, Suite 628

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